

**BOARD OF ZONING APPEALS
WILLIAMSBURG, VIRGINIA
AGENDA**

Tuesday, September 4, 2007

The meeting will be called to order by Chairman White in Conference Room 3A, Third Floor, Williamsburg Municipal Building, 401 Lafayette Street, on Tuesday, September 4, 2007, at 4:00 P.M.

OPEN FORUM

PUBLIC HEARINGS

BZA #07-006: Request of Frederick and Barbara Siegel for a variance from Section 21-142(1) of the Zoning Ordinance to construct a detached garage twenty feet from the right-of-way instead of the required thirty-five feet. The property is located at 3 Bayberry Lane, Williamsburg Tax Map Number 523-02-00-0010 and is zoned Single-Family Dwelling District RS-1.

OLD BUSINESS

NEW BUSINESS

Approval of the Minutes of the April 3, 2007 meeting.

BZA #07-005: Housing Partnerships, Inc./414 Pocahontas Ave – Administrative Approval

The Board will view the site, 3 Bayberry Lane (BZA #07-006), as a group at 3:30 p.m. on September 4, 2007.



CASES



CITY OF WILLIAMSBURG

Planning Department

TO: Board of Zoning Appeals

DATE: August 31, 2007

**SUBJECT: BZA #07-006 Frederick and Barbara Siegel
3 Bayberry Lane - Variance Request**

Mr. and Mrs. Siegel have requested a variance from the thirty-five foot front yard setback requirement of Section 21-142(1) of the Zoning Ordinance to construct a detached garage twenty feet from the right-of-way. The property is located at 3 Bayberry Lane, is zoned Single-Family Dwelling District RS-1 and is further identified on Williamsburg Tax Map Number 523-02-00-010.

The owners of the property originally requested approval to construct a garage thirty-five feet from Bayberry Lane. Staff conducted a site visit and determined that the creek bordering the rear property line was a Resource Protection Area (RPA) feature. The proposed location of the garage was therefore within the 100' RPA Buffer. A variance to the Chesapeake Bay Regulations would be required prior to any construction within the buffer. After conferring with staff, it was mutually agreed that moving the proposed garage forward and seeking a variance from the right-of-way setback would be preferred and less costly. Upon receiving the variance application staff conducted a follow up site visit to verify the distance from the proposed garage to the RPA. Staff at this time noted that Jamestown Road, bordering this parcel, is designated as a Greenbelt. This designation requires a 50' setback. The applicants have moved the proposed garage closer to their dwelling to avoid the need for a variance to the Greenbelt requirements.

In the last five years, the following variances from the front yard setback requirements have been reviewed by the Board of Zoning Appeals:

BZA #07-003	1601 Mount Vernon Ave	Denied	-	2' instead of 15'
BZA #06-011	1203 Richmond Road	Approved	-	0' instead of 15'
BZA #06-003	7 Wildwood Lane	Approved	-	24' instead of 35'
BZA #06-002	116 Washington Street	Denied	-	20' instead of 35'
BZA #05-018	140 Second Street	Approved	-	0' instead of 15'
BZA #05-011	417 Pocahontas Trail	Approved	-	12' instead of 25'
BZA #05-010	415 Pocahontas Trail	Approved	-	12' instead of 25'
BZA #05-009	413 Pocahontas Trail	Approved	-	12' instead of 25'
BZA #05-007	1433 Richmond Road	Approved	-	7' instead of 15'
BZA #04-006	434 S Henry Street	Denied	-	15' instead of 25'
BZA #02-016	215 Richmond Road	Approved	-	20' instead of 25'

In reaching a decision the following sections of the Zoning Ordinance pertain to variances.

Section 21-97(b)1. "When a property owner can show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the chapter, or where, by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property immediately adjacent thereto, the strict application of the terms of the applicable provisions of this chapter would effectively prohibit or unreasonably restrict the utilization of the property, or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this chapter."

Section 21-97(b) 2. "No such variance shall be authorized by the board unless it finds:

- a. That the strict application of this chapter would produce undue hardship.
- b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance."

Section 21-97(b)4. "No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the chapter."

Section 21-97(b)5. "In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with."

MAJOR QUESTIONS BEFORE THE BOARD

1. Whether or not there exists sufficient hardship to reduce the front yard setback from thirty-five feet to twenty feet for the building. The Zoning Ordinance allows the Board to consider "exceptional narrowness, shallowness, or shape of a specific piece of property... or...exceptional topographic conditions or other extraordinary or exceptional situation or conditions..."
2. Is the hardship shared generally by other properties in the same zoning district and

- the same vicinity?
3. Would the authorization of such a variance be of substantial detriment to adjacent property and will the character of the district be changed by the granting of the variance?



Rodney S. Rhodes
Zoning Administrator



BOARD OF ZONING APPEALS
WILLIAMSBURG PLANNING DEPARTMENT
401 LAFAYETTE STREET
WILLIAMSBURG, VIRGINIA 23185-3617
(757) 220-6130 FAX (757) 259-8050

BZA# 07-006
DATE 8-2-07

OWNER(S): Frederick & Barbara Siegel
ADDRESS: 3 Bayberry Lane
PHONE/FAX NUMBER/E-MAIL: 757 259 0184 fw siegel @ yahoo.com
APPLICANT/REPRESENTATIVE: Steve Gagny
ADDRESS: P.O. Box 198 Toccoa, VA. 23168
PHONE/FAX NUMBER/E-MAIL: cell 342-4460 / office 566-8900
LOCATION OF THE REQUEST: 3 Bayberry Lane

ATTACH PLAT OR DETAILED DRAWING OF PROPERTY SHOWING EXISTING STRUCTURES, PROPOSED STRUCTURES, SET BACK LINES AND ENCROACHMENTS.

THE FOLLOWING REQUEST IS MADE TO THE BOARD OF ZONING APPEALS FOR:

- ☐ AN APPEAL TO AN INTERPRETATION OF THE ZONING ORDINANCE, ZONING MAP, OR AN APPEAL OF AN ADMINISTRATIVE DECISION.

Provide narrative statements describing the nature and purpose of the appeal and specifying the action requested of the Board of Zoning Appeals.

- ☒ A VARIANCE RELATING TO location of garage 20' from front property line

Provide narrative statements demonstrating that the requested variance meets each of the following tests:

1. The property was acquired in good faith.
2. Narrowness, shallowness, topographic conditions, size of the property or shape of the property at the time of the effective date of the Zoning Ordinance or use/development of the property immediately adjacent creates a hardship.
3. The strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property.
4. The above described hardship does not result from the actions of the owner(s).
5. The degree of variance requested is the minimum needed to remove the hardship. If not, why is more needed?
6. Granting the variance would not adversely impact adjacent properties.

- ☐ A SPECIAL EXCEPTION FOR _____

Provide narrative statements demonstrating that the requested special exception meets each of the following requirements:

1. It is designed, constructed and operated to adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property.
2. It does not unreasonably impair an adequate supply of light and air to adjacent property.
3. It does not increase public danger from fire or otherwise unreasonably restrict public safety.
4. It does not impair the established property values in surrounding areas.

Initials fw siegel

I/We, respectfully request that a determination be made by the Board of Zoning Appeals for the above-noted request which is true to the best of my/our knowledge and belief.

Subscribed & Signed: Barbara M. Ueigle
Signature of Owner(s)

May 9, 2007
Date

Sworn before me this 9th day of May, 2007.

Elizabeth Lee
Notary

1-31-2010
My Commission Expires

FOR OFFICE USE ONLY

TAX MAP NUMBER: 523-02-00-010 ZONING: RS-1

DATE OF PUBLIC HEARING: September 4, 2007 NOTICES MAILED: 8-15-07
(SEE ATTACHED SHEET FOR PERSONS NOTIFIED)

DECISION:

THE DECISION OF THE BOARD OF ZONING APPEALS MAY BE APPEALED TO THE CIRCUIT COURT WITHIN 30 DAYS AFTER THE FINAL DECISION OF THE BOARD.

ZONING ADMINISTRATOR
Rodney S. Rhodes

DATE

March, 2007

The property was acquired in good faith.

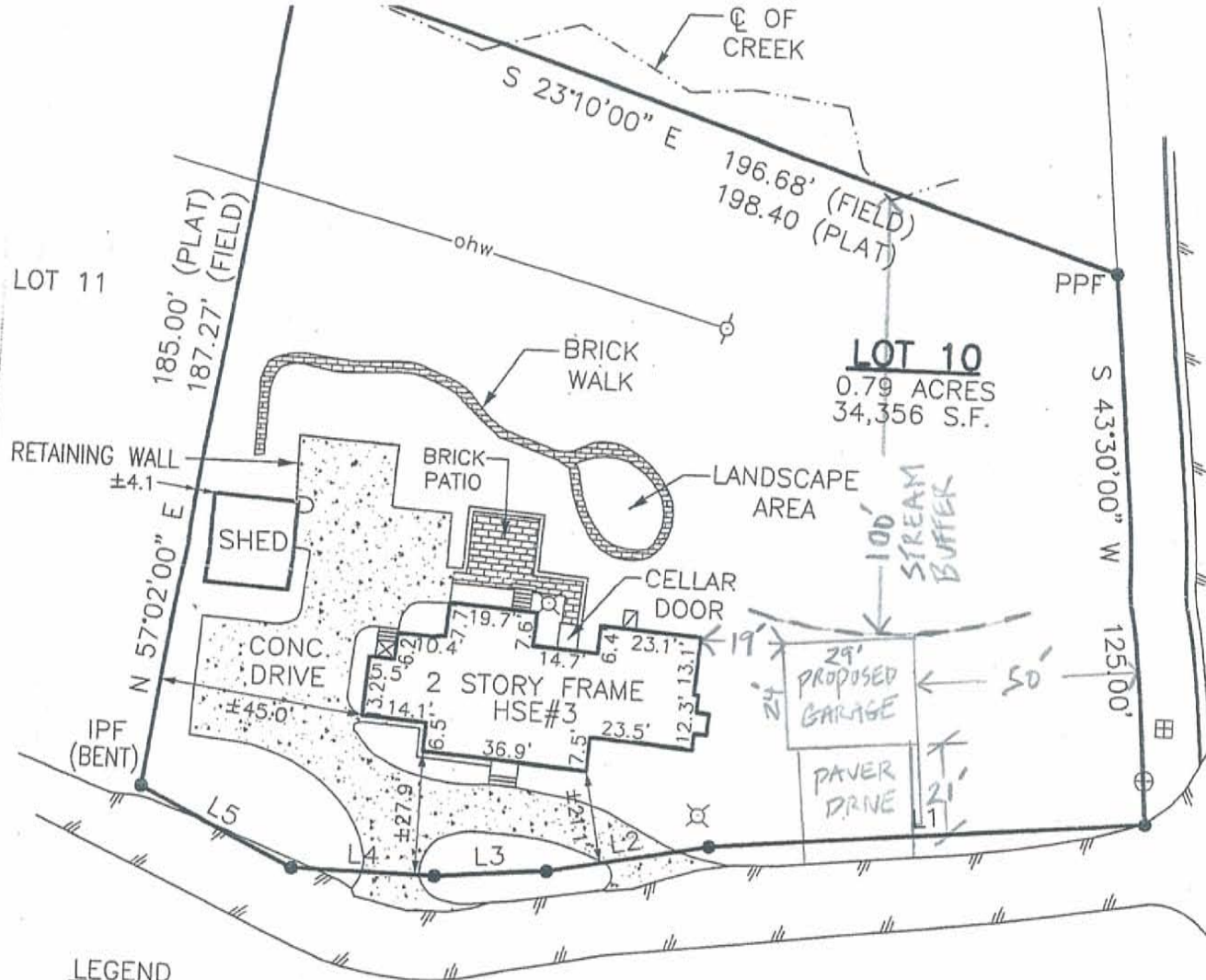
Plans have been approved by ARB to build a new 2 car garage.

We are trying to meet the Chesapeake Bay Authority requirement for a 100' setback from the stream in the ravine behind the house.

Therefore, we are requesting a variance from a 35' setback to a 20' setback from Bayberry Lane for the front of the garage. Without the 15' variance, we would be forced to appeal to the Chesapeake Bay Authority for a change in the 100' rule.

Do not believe that the variance would adversely impact adjacent properties since the garage is between our house and Jamestown Road.

LOT 11



JAMESTOWN ROAD
VAR. WIDTH R/W

LOT 10

0.79 ACRES
34,356 S.F.

LEGEND

- 2 Power Pole
- 3 Cable Pedestal
- 3 Water Meter
- 1 Light Pole
- 1 HVAC Units
- " Overhead Wire

BAYBERRY LANE

20' PUBLIC R/W
(D.B. 40 PG. 393)

ADDRESS:

3 BAYBERRY LANE
WILLIAMSBURG, VIRGINIA

NUMBER	DIRECTION	DISTANCE
L1	N 46°24'00" W	98.70'
L2	N 52°10'00" W	37.50'
L3	N 45°52'00" W	25.13'
L4	N 40°02'00" W	31.11'
L5	N 14°03'00" W	38.34'

REFERENCES:

P.B. 11 PG. 43
P.B. 35 PG. 115

DATE: 8/16/06
SCALE: 1"=40'
JOB# 06-351

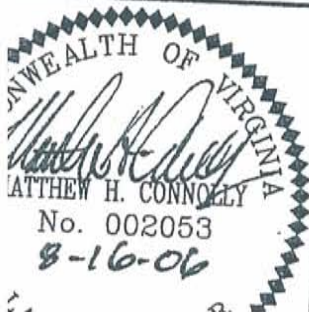
PHYSICAL SURVEY OF LOT 10,
ELISABETH K. WALLACE PROPERTY

For:

FREDERICK W. & BARBARA M. SIEGEL
City of Williamsburg, Virginia

LandTech Resources, Inc.

Surveying • GPS • Etc.



BZA MINUTES

**WILLIAMSBURG
BOARD OF ZONING APPEALS
MINUTES**

April 3, 2007

The regular monthly meeting of the Williamsburg Board of Zoning Appeals was held on Tuesday, April 3, 2007 at 4:00 p.m. in the Williamsburg Municipal Building, 401 Lafayette Street.

CALL TO ORDER and ATTENDANCE

Vice-Chairman Lamson called the meeting to order. Present in addition to Mr. Lamson were Board members Goddin, Carr and Knudson. Board member White was absent. Staff members present were Zoning Administrator Rhodes and Secretary Scott.

OPEN FORUM

Vice-Chairman Lamson opened the Open Forum portion of the meeting for anyone present to address the Board on any subject other than what is on the agenda.

There being no comment the Open Forum was closed.

PUBLIC HEARINGS

BZA #07-004: Request of Busch Entertainment Corporation for a special exception per Section 21-618 of the Zoning Ordinance to provide housing for 80 exchange visitors in the Econo-Lodge Motel. The applicant is seeking a renewal of the permit (PCR #06-011) issued by City Council in 2006. The property is located at 442 Parkway Drive, Williamsburg Tax Map Number 408-(0A)-00-025 and is zoned Corridor Business District (B-2). Approved

Vice-Chairman Lamson introduced the request for a special exception and called for a roll call vote of Board members' confirmation of the site visit.

Confirmation of site visit:

Aye: Knudson, Carr, Goddin, Lamson
Nay: None
Absent: White

Mr. Lamson introduced the request noting that City Council amended the ordinance in January 2007 to require that these particular special use permit renewals be considered by the Board of Zoning Appeals through the special exception process. He then invited the applicant to comment on the request.

David Otey, representing Busch Entertainment Corporation stated that the applicant set a good example last year with no problems housing employees at the International

Housing Village, 900 Capitol Landing Road. He pointed out the need for housing such as this, and said Busch Entertainment Corporation has 80 students on temporary J-1 visa scheduled to work for Water Country, U.S.A. It is proposed that these 80 students be housed in the Econo-Lodge Motel, 442 Parkway Drive, which is in close proximity to the International Housing Village.

Mr. Lamson asked for questions from the Board.

Mr. Carr asked the duration of a J-1 visa and was told it is for five months, four months for work and one month for travel. The length of occupancy at the motel will not exceed the length of the stay permitted by the visa.

In response to Mr. Carr's question of the frequency of inspections of the premises by Busch, he was told it will be the same as at the International Housing Village, which is every other week with an in-depth inspection once a month. Zoning Administrator Rhodes noted that some violations were found upon recent inspection of a random selection of rooms at the Econo-Lodge Motel by the City's Property Maintenance Inspector. The applicant has no problem with City inspectors doing an inspection in addition to the Williamsburg Fire Department's annual inspection.

To Mr. Goddin's question about the students not needing vehicles, the applicant said although the students are able to have a car, the procedure is more complicated and not very frequently pursued. Because Busch Entertainment Corporation provides transportation for its employees and the students will have the use of the facilities of the nearby International Housing Village, there is no need for additional transportation.

Vice-Chairman Lamson opened the public hearing.

There being no comment the public hearing was closed.

Mr. Carr asked about the transient occupancy tax condition under which the special use permit was approved by City Council. The condition states:

In lieu of the transient occupancy tax, a hotel/motel or an employer-owned facility shall pay a fee to the City that is five percent of the rent collected for the rooms leased to exchange visitors.

Zoning Administrator Rhodes confirmed payment of the fee for 2006.

Mrs. Knudson moved that the special exception request be approved with the addition of staff recommendations based on fulfillment of the conditions stated in Article II, Division 2 of the Zoning Ordinance. Mr. Carr seconded the motion. Mr. Rhodes asked if the motion included the conditions under which the previously issued special use permit was approved, and Mrs. Knudson said it did and amended her motion to so state. The motion would then be:

- The special exception is valid until September 30, 2007

- All exchange visitors shall be housed in the front portion of the motel closest to Capitol Landing Road
- The City of Williamsburg Property Maintenance Inspector shall satisfactorily inspect the rooms prior to occupancy.

Mr. Carr agreed with and seconded the amended motion which carried by roll call vote of 4-0.

Recorded Vote on the Motion:

Aye: Knudson, Carr, Goddin, Lamson
Nay: None
Absent: White

OLD BUSINESS

BZA #07-02: Request of Lee Conder for a variance from Section 21-167(2) of the Zoning Ordinance to construct an attached carport five feet from the side property line instead of the required ten feet. The property is located at 512 Burbank Street, Williamsburg Tax Map Number 435-07-00-053 and is zoned Single-Family Dwelling District RS-2. Approved

Vice-Chairman Lamson noted that a public hearing for this case was conducted on March 6, 2007 when the Board tabled action and requested additional information from the applicant. He then asked the applicant for comments on the request for a variance.

Lee Conder, owner/applicant, stated that a soil sampling taken by Ann Ruff, Inc. Soil Scientist, demonstrated the soil is adequate for the proposed addition. The modified proposal eliminates the need for a new driveway to be cut into the steep bank along Burbank Street and will now be rerouted to the existing drive with two strips of gravel for the tires of vehicles. He noted there will be no cover on the existing deck, the roof will be resingled to match existing and the roof line will also match up to the existing line. There will be no exposed wood except for the 6 x 6s, and because moving the HVAC system would cost \$4,000, Mr. Conder said it will not be moved.

In response to Mr. Carr's question about the percentage of impervious surface with the gravel driveway, Mr. Conder said the proposed driveway will be pea gravel and will eventually be replaced with a concrete drive. Mr. Rhodes confirmed that no more than 30% of the front yard can be taken up with a driveway of any sort. He added that he's not sure the 30% limit has yet been met.

Mr. Goddin asked what the hardship would be to justify the Board's approval of the variance and added that he does not consider the \$4,000 fee to move the HVAC a hardship. Mr. Conder answered that if the HVAC system was moved there would be only four feet left on the side of the house. In addition, although he would love to have a

garage in the rear, the topography of the lot, the creek and slope make it tough to build. He said he needs a carport for the protection of his truck as well as for the 1967 Mustang he's restoring and for the storage of yard maintenance equipment and tools.

Mrs. Knudson stated that she personally is in favor of garages because they allow vehicles to be removed from the streets. Mr. Rhodes noted that Mr. Conder's next door

neighbor has no problem with the variance. Mrs. Knudson pointed out that the topography of the lot is a hardship. Mr. Goddin said he has a different opinion about garages being necessary and the applicant could have a two-car carport if the HVAC system is moved.

Mr. Carr noted that he does not have a garage, but wishes he did. Storms can certainly do damage and he is sympathetic with the need for protection of the vehicles; he is in favor of the request.

Mr. Lamson said he agrees with Mrs. Knudson and moving the HVAC system is not necessary. He said he would support the request for a variance because of the topography of the property. Another reason for his support is to remove cars from the street and allow them the protection of a covering.

Mrs. Knudson moved the variance be approved based on Zoning Ordinance Section 21-97(b)1. which states, "When a property owner can show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the chapter, or where, by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property immediately adjacent thereto, the strict application of the terms of the applicable provisions of this chapter would effectively prohibit or unreasonably restrict the utilization of the property, or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this chapter."

Mr. Carr seconded the motion which carried by roll call vote of 3-1.

Recorded Vote on the Motion:

Aye: Knudson, Carr, Lamson

Nay: Goddin

Absent: White

Revised BZA Application

Mr. Carr commended Mr. Rhodes and Ms. Scott for their work on the revised application and noted the requests made by the Board have been accurately incorporated. The

remaining members of the Board concurred. Mr. Carr then moved that the revised application be approved. Mr. Goddin seconded the motion which carried by roll call vote of 4-0.

Recorded Vote on the Motion:

Aye: Knudson, Carr, Goddin, Lamson

Nay: None

Absent: White

BZA Authorization Form

Mr. Goodin asked that e-mail addresses be added to the authorization form in keeping with today's technology.

NEW BUSINESS

Minutes from the March 6, 2007 meeting

Mr. Goddin moved that the minutes of the March 6, 2007 meeting be approved with the one correction noted. Mrs. Knudson seconded the motion which carried by roll call vote of 4-0.

Recorded Vote on the Motion:

Aye: Knudson, Carr, Goddin, Lamson

Nay: None

Absent: White

There being no further business the meeting adjourned at 4:35 p.m.

Respectfully submitted,

David Lamson, Vice-Chairman
Board of Zoning Appeals